Bill 36: Alberta Land Stewardship Act Summary
This is a follow-up to the Member Bulletin issued on Friday, May 1, 2009.

On April 27, 2009 the Honourable Ted Morton, Minister of Sustainable Resource Development, tabled Bill 36, the Alberta Land Stewardship Act (ALSA). This proposed legislation received second reading and is scheduled to receive third reading in early June.

In anticipation of members attending SRD-hosted open houses throughout Alberta, we have worked with government staff to create the attached executive summary of Bill 36. Since the legislation is lengthy, this summary may be a useful tool in determining questions and concerns members wish to raise at the open houses.

The open houses run from May 6 until May 27. For details on where and when these are being held, click here. The AAMDC will have representation at some of these open houses and encourages member municipalities to attend.

For more information on Bill 36, click here. To view the legislation and explanatory notes in their entirety, click here.

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The establishment of the seven land use regions in Alberta is congruent with Alberta’s major watersheds.

The three purposes of the legislation are set out in Section 1:

(a) to provide a means by which the Government can give direction and provide leadership in identifying the objectives of the Province of Alberta, including economic, environmental and social objectives;

(b) to provide a means to plan for the future, recognizing the need to manage activity to meet the reasonably foreseeable needs of current and future generations of Albertans, including aboriginal peoples;

(c) to create legislation and policy that enable sustainable development by taking account of and responding to the cumulative effect of human endeavour and other events.

Effect is defined in Section 2(g) as:

(i) any effect on the environment, human health or safety, a species or an objective in a regional plan, regardless of the scale, nature, intensity, duration, frequency, probability or potential of the effect, and

(ii) a cumulative effect that arises over time or in combination with other effects.

Regulatory instrument (Section 2(v)) includes not only municipal bylaws but also the following instruments of a local government body:

a. policies, plans, objectives or procedures;

b. rules, directions or administrative regulations to guide or direct administrative conduct;

c. instruments used to administer, guide or direct the exercise of regulatory, administrative or decision-making discretion or authority;

d. instruments that manage, authorize, permit or allow an activity, other than a statutory consenter a regulation made under an enactment.

PART 1 – REGIONAL PLANS

By Sections 4 and 5, only the Lieutenant Governor in Council may make, amend or repeal regional plans, and a regional plan may be made, amended or repealed.

Section 6 outlines that at least once every 10 years, each regional plan must be reviewed by the Land Use Secretariat and a report prepared for the Stewardship Minister on its ongoing relevancy and effectiveness. If no review is started within 10 years, a regional plan expires.

The legislation under Division 2 (Contents of Regional Plans) speaks in terms of may and shall:

A regional plan may contain some history and geography about the region, as well as information about its demographics, economic, environmental and social characteristics, and what may be called a SWOT analysis, but it must contain a vision for the region and state one or more objectives.
All the matters such as target timelines, policies to achieve the objective(s), benchmarks, indicators, monitoring, actions to be taken etc. are discretionary to be included in a plan.

Under Section 9 (Implementing Regional Plans) a regional plan may contain provisions that the Lieutenant Governor in Council considers necessary or appropriate to advance or implement, or both advance and implement, the purposes of this Act. Thereafter follows in Section 9(2) a multitude of examples, including adopting statements of provincial policy, regulations, managing all or part of a cause or effect, managing natural resources, authorizing expropriation, setting up fines and enforcement provisions etc.

Section 10 sets up the authorization of sub-regional or issue-specific plans (such as the Capital Region Plan).

Section 12 clarifies that a regional plan may make different provisions for different parts of the planning region, as well as different classes of effect arising from an activity in the planning region.

PART 2 – NATURE AND EFFECT OF REGIONAL PLANS AND COMPLIANCE DECLARATIONS

Section 13(1) provides that a regional plan is an expression of the public policy of the Government and therefore the Lieutenant Governor in Council has exclusive and final jurisdiction over its contents.

Section 13(2) indicates that regional plans are legislative instruments and, for the purposes of any other enactment, are considered to be regulations.

Section 15 gives regional plans some teeth, and requires that such plans bind:

(a) the Crown,
(b) local government bodies,
(c) decision-makers, and
(d) all other persons.

The same section also says that no cause of actions can be started by anyone simply as a result of the statement regarding the binding nature of such plans, and Section 16 provides an exception to complying with a plan in the case of an emergency or protecting public health, safety or property.

Section 17 establishes the primacy of regional plans over any regulatory instrument.

Section 18 establishes that the stewardship commissioner (appointed under Section 56(2)) can apply to a court where there is non-compliance under the Act, a regulation or a regional plan.

Division 3 (Compliance Declarations) requires under Section 20 that when a regional plan is made, every local government body affected by the plan must:

(a) review its regulatory instruments, and
(b) decide what, if any, new regulatory instruments or changes to regulatory instruments are required for compliance with the regional plan.

Further, every local government body affected by the regional plan must, within the time set in or under, or in accordance with, the regional plan,
(a) make any necessary changes or implement new initiatives to comply with the regional plan, and

(b) file a statutory declaration with the secretariat that the review required by this section is complete and that the local government body is in compliance with the regional plan.

PART 3 – CONSERVATION AND STEWARDSHIP TOOLS

Part 3 begins with Section 23 outlining that the Lieutenant Governor in Council (LGIC) may support or develop instruments, including market-based instruments to support, enhance or implement the Act, or objectives and policies in or proposed for a plan, and Section 24 allowing for the LGIC to also establish programs and other measures for the same purpose.

Section 25 makes the LGIC responsible for supporting or facilitating funding and cost-sharing to support or enhance a number of conservation initiatives such as conservation easements, conservation directives, and instruments regarding protection, conservation and enhancement of the environment, natural scenes, and agricultural land.

Utilizing Section 26, the LGIC can delegate the above responsibilities to the Stewardship Minister.

Division 2 of Part 3 covers conservation easements, which are essentially voluntary legal agreements between landowners and qualified organizations (like a government, a charity or a land trust) to conserve the ecological integrity of a piece of land. The easement is registered, but landowners retain ownership. While such easements existed previously under the Environmental Protection and Enhancement Act, they are being moved to the ALSA and expanded to conserve agricultural land.

Conservation directives appear in Section 35. Using such a tool, a regional plan can conserve agricultural land, ecologically sensitive areas and scenic landscapes. The landowner can apply for compensation from the Land Compensation Board for being placed under such a directive.

Division 4 covers the Exchange, Stewardship Units and Conservation Off-set Programs.

This Division contemplates the setting up of a conservation exchange which oversees stewardship units, and the establishment of conservation off-set programs (can be used to counterbalance the effects of an activity, such as where a company may conserve an environmentally significant area to offset its industrial activity elsewhere).

Division 5 cites authority for transfer of development credit schemes (TDCs). These TDCs help direct development away from specific areas needed to conserve ecologically sensitive, scenic, historic or agricultural areas. Land use plans (regional, sub-regional or municipal) may allow use of TDCs and two or more local authorities may also agree to establish such a scheme with the consent of the LGIC.

PART 4 – REGIONAL PLANNING PROCESS AND ITS ADMINISTRATION

Part 4, Division 1 of the Bill gives the LGIC control over the regional planning process, and Part 2 provides for the discretionary appointment by the LGIC of regional advisory councils. Again, complete control of these councils rests with the LGIC, who may delegate the role to the Stewardship Minister.

Section 53 provides an exemption from liability for regional council members and reads:
No action lies against a member of a regional advisory council for anything done or omitted to be done by the member in good faith while acting as a member of the regional advisory council and carrying out the functions of a member.

The Land Use Secretariat is responsible under Section 54 for resourcing the advisory councils.

Under Division 3, the Land Use Secretariat is established and described. It is a unit which is part of the public service of Alberta, but is not a government department. It is headed by the stewardship commissioner.

The secretariat is responsible for preparing or directing preparation of regional plans and sub-regional plans, storing them, identifying needed policy for the consideration of the LGIC, keeping the plans up to date, conducting the 10 year reviews, and facilitating and coordinating implementation and cooperation between parties.

The secretariat is also responsible for monitoring progress with respect to the plans and investigating complaints regarding them.

By Section 66(1), the LGIC may make regulations providing for financial and other incentives to support the purposes of this Act and the objectives and policies of regional plans and by Section 66(2) he has wide powers respecting the provision of financial grants and services, promoting research and best practices, providing recognition and award programs and respecting education and information.

PART 5 – TRANSITIONAL PROVISIONS, RELATED AMENDMENTS AND COMING INTO FORCE

The remainder of the Bill (Part 5) deals with transitional provisions and related amendments to numerous pieces of legislation.